

REMARKS/ARGUMENTS

The claims have been divided into Groups as follows:

Group I: Claim(s) 1-9, drawn to a catalyst, catalyst support, or catalyst diluent.

Group II: Claim(s) 10-13, drawn to a method for gas phase reaction using a catalyst.

Applicants elect, with traverse, Group I, Claims 1-9, for examination.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (MPEP §803). Moreover, when citing lack of unity of invention, in a national stage application, the Examiner has the burden of explaining why each group lacks unity with each other (MPEP §1893.03(d)), i.e. why there is no single general inventive concept. The presence of no single inventive concept must be specifically described.

The Examiner has asserted that Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because under PCT Rule 13.2, they lack the same or corresponding technical features. The examiner states:

“It is considered the method of Group II can be conducted without using the catalyst of Group I. However, in accordance with the MPEP rule, the method claims of Group II can be rejoined if the product of Group I is elected for examination.”

Annex B of the Administrative Instructions under the PCT at (b) Technical Relationship states:

“The expression “special technical features” is defined in Rule 13.2 as meaning those technical features that defines a contribution which each of the inventions, considered as a whole, makes over the prior art. The determination is made on the contents of the claims as interpreted in light of the description and drawings (if any).”

Applicants respectfully submit that the Examiner has not provided any indication that the contents of the claims interpreted in light of the description was considered in making the

assertion of a lack of unity and therefore has not met the burden necessary to support the assertion.

Applicants respectfully refer to Annex B of the Administrative Instructions Under the PCT, paragraph (c), which states in part, "Unity of invention has to be considered in the first place only in relation to the independent claims in an international application and not the dependent claims." Claims 10-13 all depend directly or indirectly from Claim 1 in this application.

Applicants submit that the Examiner has not carried the burden of providing reasons or examples specifically supporting a conclusion that the groups lack unity of invention nor has the dependency of claims 10-13 from claim 1 been considered. For these reasons, Applicants submit that the Requirement for Restriction should be withdrawn.

Applicants request that if the invention of Group I is allowed, withdrawn Groups II and III which depend from the allowed claims be rejoined (MPEP §821.04).

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction.

Applicants therefore request that the requirement for restriction be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

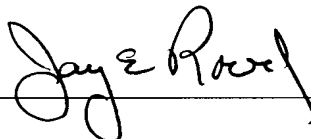
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